

U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT PLAN TO IMPLEMENT THE CRIMINAL JUSTICE ACT OF 1964

**Effective July 1, 1991
As Amended April 8, 1996; October 23, 1996**

Pursuant to approval of the Judicial Council for the District of Columbia Circuit (Judicial Council), the United States Court of Appeals for the District of Columbia Circuit hereby adopts the following revised plan for furnishing representation for persons financially unable to obtain adequate representation in the cases and situations defined in 18 U.S.C. § 3006A, as amended (hereinafter, "the Act"). This plan supplements the plan of the United States District Court for the District of Columbia Circuit, unless otherwise specified herein.

I. PROVISION FOR FURNISHING COUNSEL

a) This plan provides for the furnishing of legal services on appeal by the Federal Defender organization for the District of Columbia, established in accordance with the November 8, 1988, amendment to the CJA Plan for the United States District Court for the District of Columbia, which was approved by the Judicial Council on December 15, 1988. In addition, this plan provides for the appointment and compensation of appellate counsel from the list of attorneys established and maintained in accordance with part (b) of this section.

Insofar as practicable, attorney appointments from the list will be made in at least 25 percent of the cases.

b) The Court shall establish a list of attorneys who are members of the Bar of the Court and who have demonstrated experience in appellate litigation. No attorney with less than one year's active membership in the District of Columbia or a state bar shall be included on the list. Completion of an appellate litigation training course may substitute for demonstrated experience. The Chief Judge shall appoint an Attorney Selection Committee to evaluate attorneys' eligibility for the list. This Committee shall consist of two active Circuit Judges, the Federal Public Defender, one experienced attorney who is on the list, and one experienced criminal law practitioner who is not on the list. The Committee shall re-examine the list annually to assure that it is current, and that its members are qualified. The Committee shall also review the operation and administration of the CJA list over the preceding year and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management.

c) Attorneys who wish to be included on the list may petition the Court in writing, stating their eligibility as defined in section (b) above. The Court may direct the Clerk to add any attorney when satisfied of his or her eligibility.

d) Attorneys may petition the Court In writing to be removed from the list and the Court may so direct the Clerk. A panel, on its own motion, may also recommend to the CJA Committee that an attorney be removed from the list and the CJA Committee may remove an attorney on such a motion or on its own motion.

e) In accordance with Circuit Rule 46(g), law school students may provide assistance to appointed counsel. Counsel may claim costs of compensating students for services rendered, but not for expenses incurred by such students.

II. DETERMINATION OF NEED FOR APPOINTMENT OR CONTINUANCE OF COUNSEL

a) In cases where appointment of counsel was first made by the District Court, the Court will accept the District Court's determination that the party is financially unable to obtain counsel and will make appointment of counsel without further inquiry.

b) In cases where a party for the first time seeks appointment of counsel under the Act on appeal, as further defined in section III(e), the District Court will make appropriate inquiry to determine whether the party is financially unable to obtain counsel. This Court will accept the District Court's determination that the party is financially unable to obtain counsel and make appointment of counsel without further inquiry.

c) If at any stage of an appeal the party claims and the Court, on appropriate inquiry, finds that the party is financially unable to pay counsel whom the party has retained, the Court may make such appointment of counsel or the Federal Public Defender as the interests of justice dictate.

d) The Court may at any time examine or re-examine the financial status of a party for whom counsel has been appointed, and if it is found that any funds are available for payment from or on behalf of the party, it may authorize or direct that such funds be paid to the appointed attorney in lieu of compensation under the Act or to the Court for deposit in the Treasury.

e) It shall be the duty of counsel appointed under the Act to notify the Court of any information coming to counsel's attention indicating that funds may be available for payment from or on behalf of the party, unless the source of the attorney's information is protected as a privileged communication. Counsel may not request or accept from anyone a promise or a payment of any nature in relation to representation of the party, except as authorized or directed by the Court.

f) A copy of the Court's Plan shall be provided to all counsel appointed under the Plan.

III. APPOINTMENT OF COUNSEL

a) In all cases on appeal, where a party was represented in the District Court by court-appointed counsel, such counsel shall continue to represent the party on appeal, except as otherwise noted in subsections (c) and (d).

b) The party may file a written notice with the United States District Court that he or she does not desire to appeal. In such event there shall be no further obligation on counsel to proceed.

c) Application by District Court counsel to be relieved of further obligation to represent the party, or by a party that he or she no longer be represented by District Court counsel, shall be in writing and shall state the reason for the request. Counsel shall state in the application that his or her client has been advised of counsel's desire to be relieved. Counsel shall continue to represent the defendant until relieved by this Court.

d) In situations where counsel is appointed by the District Court under the discretionary power conferred by the Act in petty offenses or other instances, counsel shall advise his or her client of the right to appeal, and if requested to do so, shall file a notice of appeal. Thereafter, application shall be made to this Court for appointment of counsel, and this Court shall determine whether an appointment is required.

e) Where appointed District Court counsel is relieved from further representation, a party who is eligible under the Act is entitled to be represented by appointed counsel on appeal.

Where a party who is eligible under the Act seeks appointment of counsel for the first time on appeal, the Clerk of the District Court shall advise the party that if he or she desires the appointment of counsel, the party must complete the appropriate CJA form and file it with the District Court. The District Court will rule on the application in the first instance; if the District Court determines that the party is not financially eligible for representation, the request for representation may be renewed before the Court of Appeals without filing a new notice of appeal. The Chief Judge, delegate Judge, or panel will review the statement of financial need.

If the party does not desire the appointment of counsel, the party may so advise the Clerk of the Court of Appeals, by filing with the Clerk a signed statement to that effect.

f) Appointments by the Court of Appeals will be made to the Federal Defender Organization, if the Federal Public Defender so requests, or by selection from the list of attorneys defined in section I(b). In order to ensure the effective supervision and management of the Federal Defender Organization, the Federal Public Defender will be responsible for the assignment of cases among the staff attorneys in that office.

g) Upon the determination of a need for counsel, the Clerk shall notify the Federal Public Defender of that need and the nature of the case. The Federal Defender Organization shall either provide the representation or select as counsel the next attorney on the list who has handled or assisted in a case of equal or greater complexity and who is available to accept the appointment. In making the decision whether to provide the representation or to select an attorney from the list, the Federal Defender Organization must take into account the requirement of section I(a) that insofar as practicable, panel attorney appointments be made in at least 25 percent of the cases.

The Federal Public Defender shall maintain a current list of all attorneys included on the CJA list, with current office addresses and telephone numbers. The Federal Public Defender shall also maintain a record of qualifications and experience of each attorney on the list. The Federal Public Defender shall maintain a public record of assignments to private counsel, as well as statistical data reflecting the proration of appointments between the Federal Defender Organization and private attorneys, according to the formula described in section I(a). Every effort shall be made to ensure that counsel is selected as expeditiously as possible, that selections are equitably distributed and that information on availability of counsel is maintained.

Selections from the list should be made on a rotational basis, subject to the Court's or the Federal Public Defender's discretion to make exceptions in unusual cases due to the nature and complexity of the case and attorney availability. This procedure should result in a balanced distribution of appointments and compensation among the members of the list of attorneys, and quality representation for each person for whom counsel is appointed.

A party is not entitled to have a particular attorney appointed. Counsel appointed shall serve until further order of the Court. Applications to withdraw shall be governed by section III(c).

h) In cases of multiple parties who have been tried together, appointment of counsel on appeal may be one or more attorneys to represent all parties, except that separate counsel shall be appointed for parties who have such conflicting interests that they cannot properly be represented by the same attorney, or when other good cause is shown.

i) The court may, in the interests of justice, substitute one appointed counsel for another at any stage of the appeal proceedings.

j) Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing

representation pursuant to the plan.

However, when the chief judge, or a circuit judge designated by the chief judge to act on his or her behalf, determines that the appointment of an attorney, who is not a member of the CJA panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in this district, should possess such qualities as would qualify him or her for admission to this district's CJA panel in the ordinary course of panel selection.

IV. DUTY OF COUNSEL AS TO CERTIORARI

The duties of representation by counsel on appeal, where the appeal has been unsuccessful, shall extend to advising the party of the right to file a petition for a writ of *certiorari* in the Supreme Court of the United States and counsel's opinion on the merits and likelihood of success in obtaining the writ. If the party asks counsel to file a petition for a writ of *certiorari* and there are non-frivolous grounds for doing so, counsel shall prepare and file a petition. If counsel determines that there are no non-frivolous grounds for seeking a writ of *certiorari*, counsel shall, within twenty days of judgment, notify the client in writing that counsel will not file a petition, briefly explaining why. Counsel shall also inform the client about the procedures both for filing a petition for *certiorari* pro se and for asking the Court of Appeals to appoint new counsel to prepare a petition for *certiorari*. Counsel should caution the party that it is unlikely the Court will appoint new counsel and that the party should be prepared to file a petition for *certiorari* pro se within the prescribed time. Once counsel has provided this notice to the party, counsel shall notify the Court that counsel's representation has ceased. The Clerk shall notify the party in writing of the effective date of the termination of counsel's appointment. Failure to comply with these procedures may result in the Court's refusal to approve counsel's voucher.

V. PAYMENT OF CLAIMS FOR COMPENSATION AND EXPENSES

a) A person for whom counsel is appointed under the Act is not required to pay filing fees and costs.

b) An attorney appointed by the Court pursuant to Part I(b) of the Plan shall be compensated for services and reimbursed for expenses reasonably incurred within the limitations and subject to the conditions of the Act.

c) The hourly rates of compensation established in accordance with the Act are intended to be maximum rates only and shall be treated as such.

d) For services rendered in this Court on the main appeal from the judgment in a felony or misdemeanor case or a case under subsection (a)(2) of the Act, the total compensation, exclusive of expenses, shall not exceed that authorized by law. However, payments in excess of these limitations may be made to provide fair compensation in a case involving extended or complex representation when so certified by a United States Circuit Judge and approved by the Chief Judge of the Court, or an active Circuit Judge to whom the Chief Judge has delegated review authority.

e) No counsel appointed under the Plan shall accept payment from or on behalf of a party without prior authorization by a United States Circuit Judge on the form provided for such purpose.

f) Each counsel appointed under Part I(b) of the Plan shall be entitled to reimbursement for expenses reasonably incurred in accordance with standards established by the United States Judicial Conference.

g) All claims for compensation and reimbursement for expenses reasonably incurred shall be submitted on the appropriate CJA form, to the Office of the Clerk of the Court of Appeals. The Clerk shall review the claim form for mathematical and technical accuracy and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures). If the form is correct, the Clerk shall forward it to the appropriate judge for consideration. All such claims should be submitted promptly and in any event not more than 45 days after the conclusion of the attorney's representation.

h) Any active member of the Court, if designated by the panel of judges hearing the appeal, shall fix the compensation and allow the reimbursement for expenses to be paid to the appropriate counsel as provided in the Act. Such claims shall then be further processed in accordance with applicable law.

i) Counsel's time and expenses involved in the preparation of a petition for a writ of *certiorari* shall be treated as part of his or her representation before this Court.

j) If an attorney is substituted for one previously appointed in the same case, the total compensation which may be paid both attorneys shall not exceed the statutory maximum for one party, unless the case involves extended or complicated representation. Vouchers for attorney's services shall not be approved until the conclusion of the appeal, unless the Chief Judge directs that interim payment be made in cases where representation is extended or complex.

k) Compensation for services furnished by a partner or associate may be claimed within the maximum compensation allowed by the Act, except that in-court services and travel expenses incurred in connection therewith cannot be allowed unless such partner

or associate has been appointed under the Criminal Justice Act.

VI. OPERATION OF THE PLAN

a) This plan incorporates the Guidelines for the Administration of the Criminal Justice Act (18 U.S.C. § 3006A) by reference.

b) The Court will comply with all directives of the Judicial Conference of the United States or the Administrative Office of the U.S. Courts regarding operation of the plan, including allowable reimbursements and the use, preparation, and submission of required forms and reports.

c) This Plan shall be effective on July 1, 1991.

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